

IN RE: PETITION FOR ZONING VARIANCE
NE Corner Castlemoor Road and
Washington Avenue
(7320 Castlemoor Road)
2nd Election District
2nd Councilmanic District
Gamma Construction Co., Inc.
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-92-A
* Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a side street setback of 8 feet in lieu of the required 10 feet for an existing dwelling in accordance with Petitioner's Exhibit 1.

The Petitioner, by Uri Ben-Or, President, appeared, testified and was represented by Julius W. Lichter, Esquire. There were no Protestants.

Testimony indicated that the subject property, known as 7320 Castlemoor Road, consists of 0.223 acres zoned D.R. 5.5 and is improved with a single family dwelling. Said property was the subject of previous Case No. 89-163-A in which a side street setback of 10 feet in lieu of the required 25 feet was granted for the subject dwelling. Testimony indicated that upon completion of the dwelling, a subsequent inspection of the property revealed that the dwelling was located 8 feet from the side street in lieu of the 10 feet granted in the previous case due to an error in the preparation of the site plan submitted at that time. Petitioner filed the instant Petition in order to correct the error.

Testimony indicated that undue hardship and practical difficulty would result if Petitioner were required to move the existing home within the building envelope as shown in Petitioner's Exhibit 1. Petitioner contends that said building envelope prevents it from constructing a dwelling similar in design, size and construction of other homes in the area.

Testimony further evidenced the existence of rock under the surface of the site which prevents Petitioner from constructing another style of house that would be in keeping with the aesthetic appearance of the neighborhood.

It should be noted that Mr. John Davidson, who appeared at the previous hearing as a Protestant and who resides two properties to the south of the subject site, was concerned that the variance was from the existing paved portion of Washington Avenue and not from the right-of-way property boundary. After a review of the plan submitted in that case, which clearly showed the variance is from the right-of-way property line, Mr. Davidson was satisfied the variance requested would not adversely affect his property or the health, safety or general welfare of the surrounding community. It is clear from the testimony that the instant variance for a setback of 8 feet in lieu of the originally granted 10 feet will not have any adverse impact upon those concerns previously raised by Mr. Davidson nor result in any detriment to the health, safety or general welfare of the community.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of September, 1989 that the Petition for Zoning Variance to permit a side street setback of 8 feet in lieu of the required 10 feet for an existing dwelling in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) The variance granted herein is conditioned upon Petitioner's compliance with the conditions and restrictions contained in the Findings of Fact and Conclusions of Law issued November 9, 1988 and the Amended Order issued November 21, 1988 in Case No. 89-163-A. In the event Petitioner fails to comply with any portion thereof, the variance granted herein shall be rescinded and Petitioner shall be required to bring the property into compliance with all building code and zoning regulations.

JRH:bjs

- 3 -

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit on Parcel 1, Lot 1, a side street setback of 8' in lieu of the required 10' (See Case No. 89-163-A)

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. Strict compliance with the side street setback on this corner lot, which was not platted by Petitioner as a narrow lot, is unnecessarily burdensome and results in practical difficulty to Petitioner.
2. House constructed pursuant to variance granted in Case No. 89-163A actually resulted in 8' side street setback and not 10' as granted in the case.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

Gamma Construction Co., Inc.

(Type or Print Name)

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CALMAN A. LEVIN
STANFORD C. GANN
MELVYN A. STERNBERG
JULIUS W. LUCHTER
SIDNEY WEISSMAN
ROBERT L. PRELLER
ANDREW R. SANDLER
RANDOLPH C. KNEPPER
MICHAEL J. KANDEL
BRIAN J. FRANK
HOWARD L. ALDERMAN, JR.
JUDITH I. GANN
HARVEY C. GANN
MAYOR L. CUTTUM
EDWARD B. STERNBERG
*ALSO ADMITTED IN DC
*ALSO ADMITTED IN NEW YORK

LAW OFFICES
LEVIN & GANN

A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0500
FAX 301-296-2801

June 20, 1989

HAND DELIVERED

RECEIVED
JUL 10 1989

ZONING OFFICE

J. Robert Haines
Zoning Commissioner for Baltimore County
County Office Building
111 W. Chesapeake Avenue
Baltimore, MD 21204

RE: Petition for Variance
Gamma Construction Co., Inc.
Lot 1 Subdivision Parcel 1
Castlemoor Road and Washington Avenue
7320 Castlemoor Road

Dear Mr. Haines:

On November 9, 1988 you granted a 10-foot side street setback in lieu of the required 25 foot. The owner and builder constructed the dwelling as proposed and were ready to conduct settlement to a purchaser when the purchaser's land surveyor determined that there physically was but an 8-foot more or less side street setback.

I enclose herewith the following:

1. Three (3) Petitions
2. Three (3) Descriptions
3. Ten (10) Plans
4. Check for \$35.00
5. Copy of Property Location Survey

Due to the extreme hardship and recent prior hearing, I would appreciate your setting this case for the earliest date.

LEVIN & GANN, P. A.

J. Robert Haines
Zoning Commissioner for Baltimore County
Page 2
June 20, 1989

Sincerely,

Julius W. Luchter

JWL:lsj

Enclosures

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 8/22/89

Gamma Construction Co., Inc.
URI B.N.-OR
12300 Dover Road
Reisterstown, Maryland 21136

Re: Petition for Zoning Variance
CASE NUMBER: 90-92-A
NEC Washington Avenue and Castlemoor Road
2nd Election District - 2nd Councilmanic
Petitioner(s): Gamma Construction Co., Inc.
HEARING SCHEDULED: FRIDAY, SEPTEMBER 8, 1989 at 3:00 p.m.

Gentlemen:

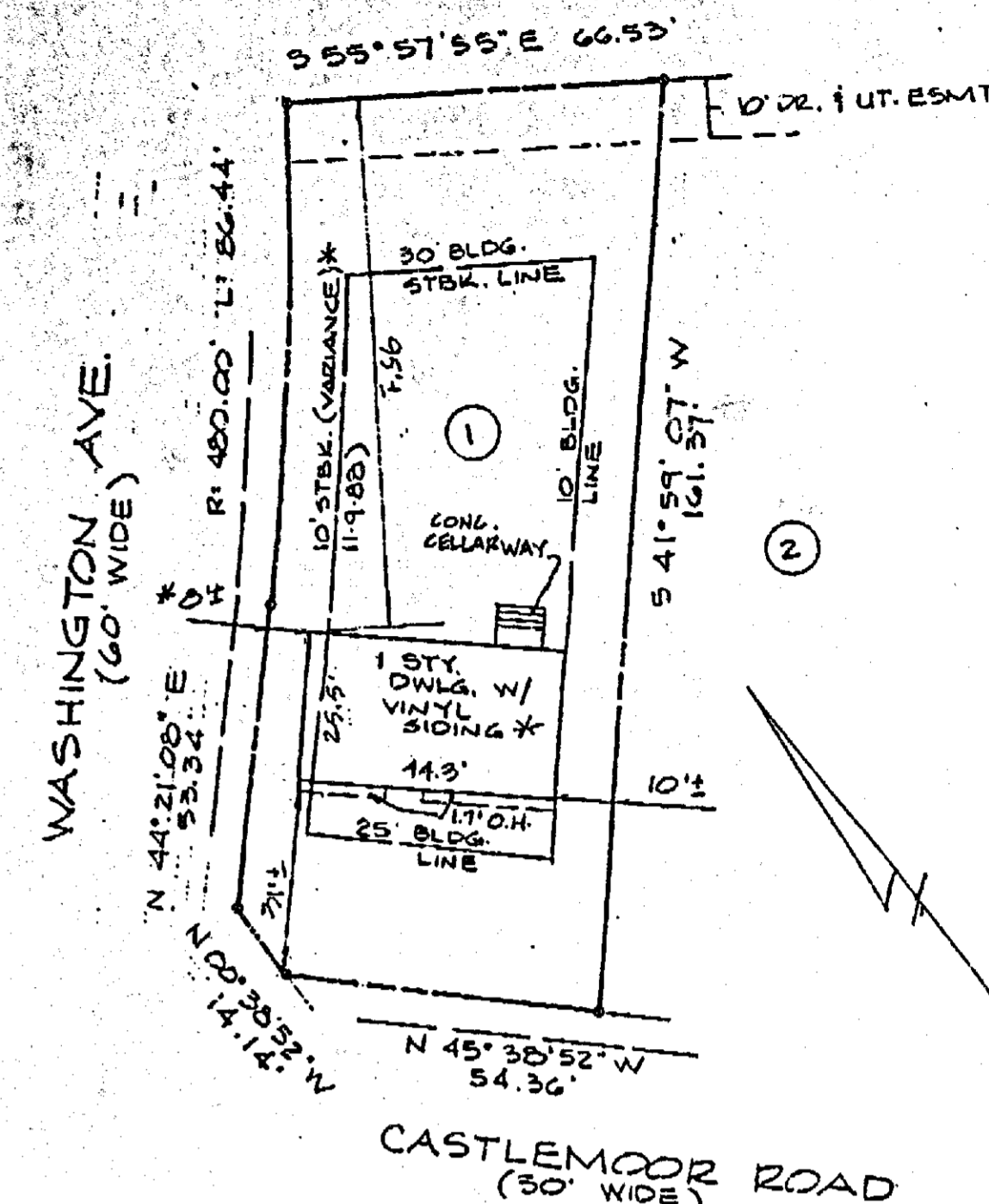
Please be advised that \$84.03 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled.

BALTIMORE COUNTY, MARYLAND No. 074430
OFFICE OF FINANCE - REVENUE DIVISION
CELLANEOUS CASH RECEIPT
7/8/89 ACCOUNT 615
AMOUNT \$ 84.03
PAID BY Gamma Construction
P.A. 90-92-A
B 8107*****8403.03
VALIDATION OR SIGNATURE OF CASHIER
FEE AGENCY YELLOW - CUSTOMER

& post set(s), there
ent for each such set



PETITIONER'S
EXHIBIT 2

*NOTE: DWELLING APPEARS TO ENCRoACH BEYOND 10' SETBACK AS VARIANCE.

I hereby certify that I have examined Flood Insurance Rate Map (Panel No. 14201C/02000B) for the subject property and it does not lie in an area identified by the Secretary of Housing and Urban Development as having special flood or mudslide hazards per said map. The information shown on this map shows only that the improvements indicated hereon are contained within the outlines of the lot upon which they are erected unless otherwise noted and is not to be used to establish property lines or corners.

DEED REF: 7757/104
LOT 1, SUBD. OF PARCEL 1
CASTLEMOOR RD & WASHINGTON AVE.
(55/100)
2ND EL. DIST. BALTO. CO., MD.

LOCATION SURVEY
7320 CASTLEMOOR ROAD
date 4-18-89
scale 1"=30'
job no. 11-71
drawn JSD
checked JSD
VT ASSOCIATES, INC.
Surveying & Engineering
4932 Hazelwood Avenue
Baltimore Md 21206
(301) 866-2001

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: August 16, 1989
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Gamma Construction Co., Inc., Item 561
Zoning Petition No. 90-92-A

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500

Paul H. Reincke
J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

JUNE 27, 1989

RE: Property Owner: GAMMA CONSTRUCTION COMPANY
Location: NE COR WASHINGTON AVENUE AND CASTLEMOOR ROAD
Item No.: 561 Zoning Agenda: JULY 5, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at intervals of 750 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works. FIRE HYDRANT SHALL BE INSTALLED AT CORNER OF WASHINGTON AVENUE AND CASTLEMOOR ROAD.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: Capt. Wm. M. Brady, Jr. Noted and Approved
Planning Group Fire Prevention Bureau
Special Inspection Division

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

July 26, 1989

RECEIVED
AUG 3 1989
ZONING OFFICE

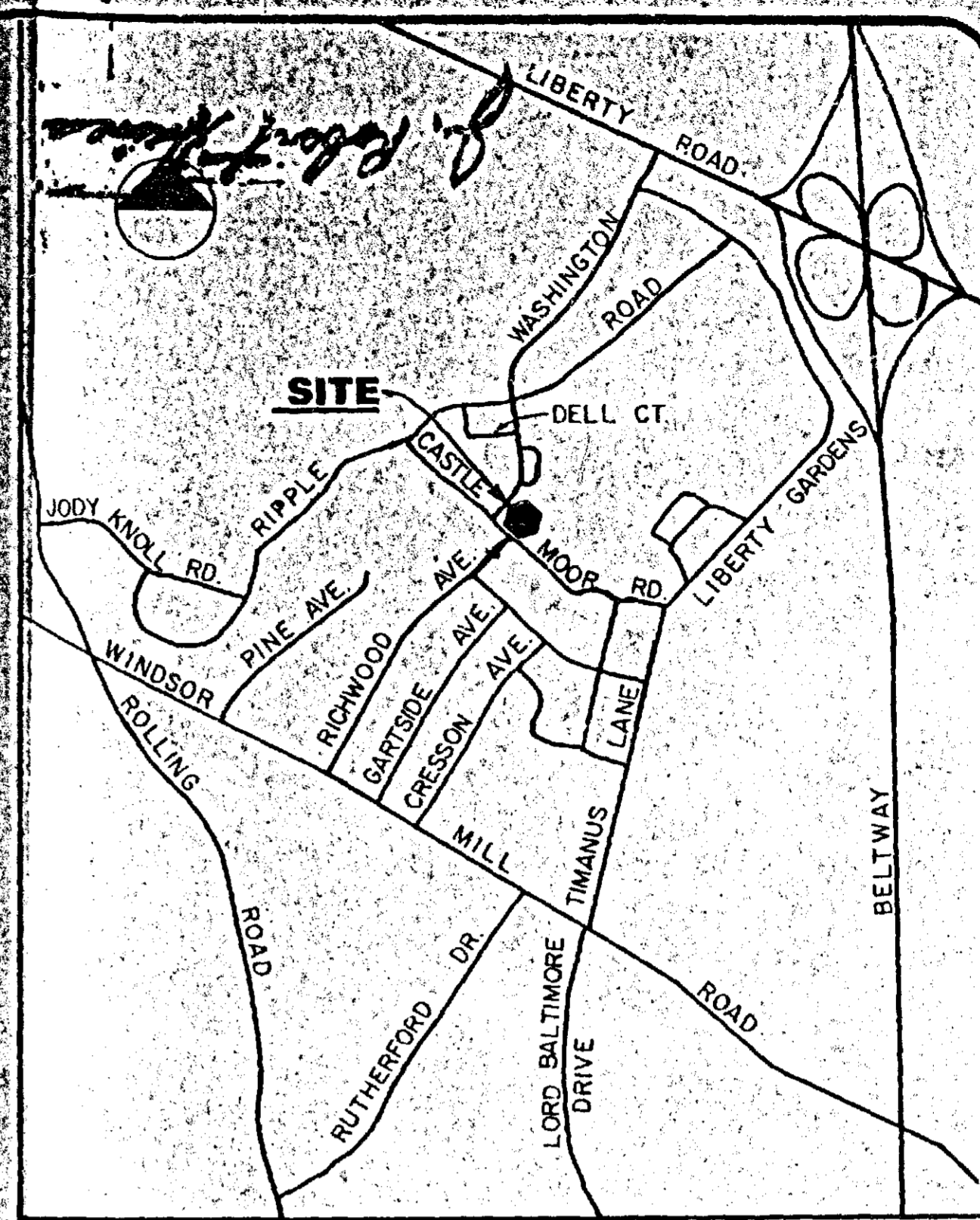
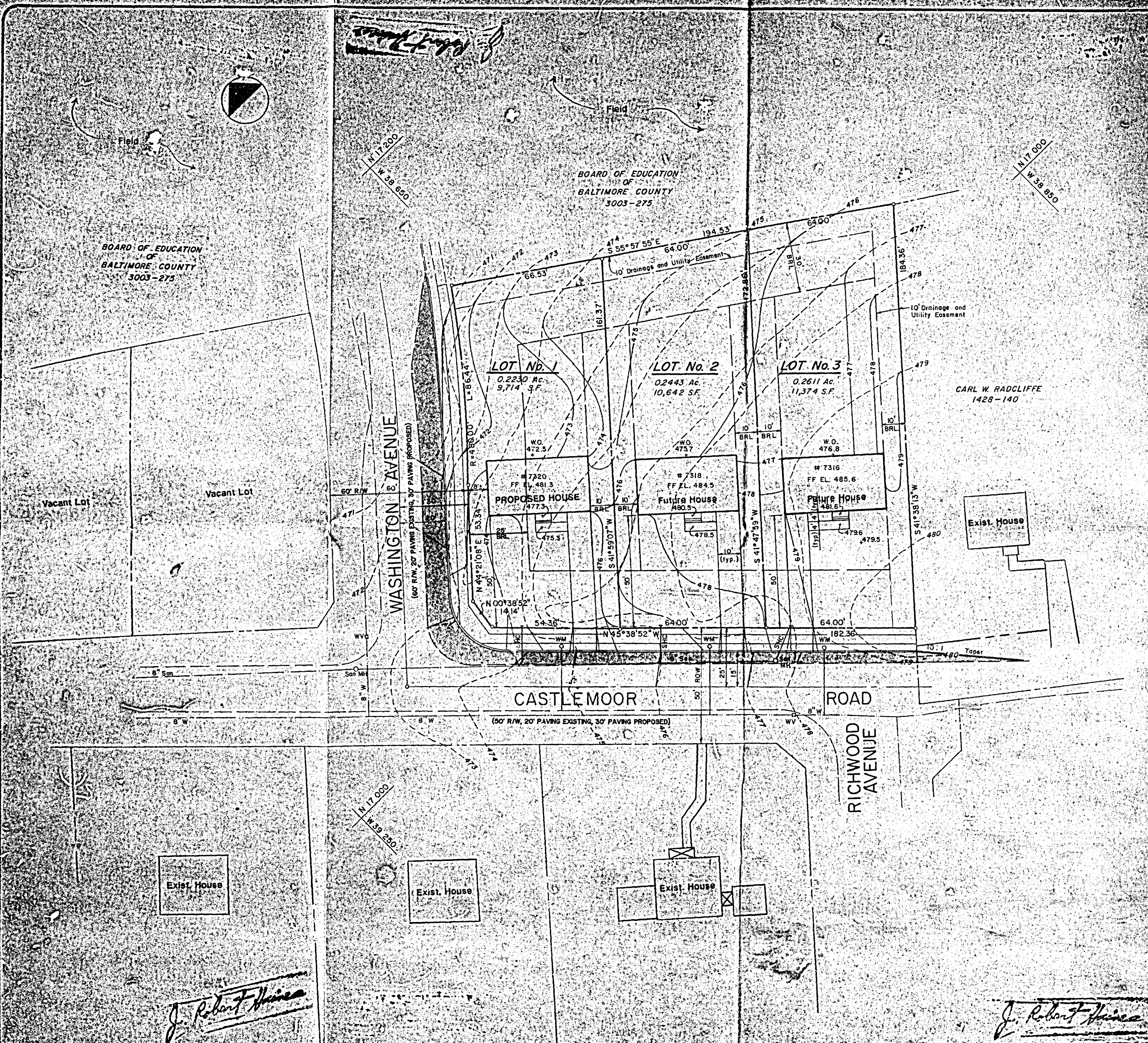
Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 523, 541, 560, 561, 562, 563, 564, 565, 567, 568, 570, 571, and 572.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Associate II

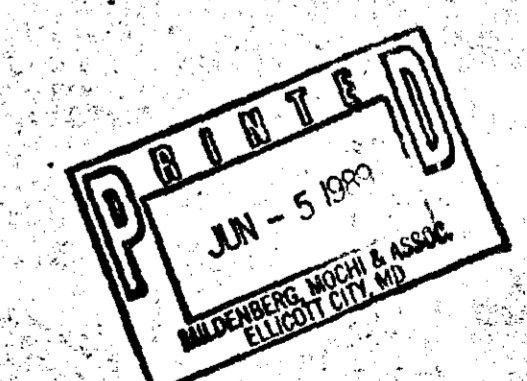
MSF/lab



VICINITY MAP
Scale: 1" = 1000'

Owner: Gamma Construction, Inc.
District: 2
Zoned: D.R. 5.5
Lot No: 1
Liber 55, Folio 100
Lot Size: 0.2230 AC

Petitioner requests a variance from BCZR Section 1B02.3.C.1 to permit a side street setback of 8 feet, more or less, in lieu of the required 25 feet.



PETITIONER'S EXHIBIT 1

MICROFILMED

The data shown hereon is based on available information.
This plat is for variance purposes only.

Project: 8703602
Date: JUNE 1988
Illustration: JNS
Scale: 1" = 20'

501

2 MODIFIED SIDE STREET SETBACK
Add Structures WITHIN 20'
description
revisions

PLAT TO ACCOMPANY VARIANCE REQUEST
PARCEL 1 - LOT 1

2ND ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

MILDBERG
MOCHI & ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
3300 North Ridge Road, Suite 215, Elwyn, PA 19021
(301) 461-0078

PRINTED
JUN - 5 1990
MILDBERG MOCHI & ASSOCIATES
ELWYN, PA 19021

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